IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2566 of 2002
With
CIVIL APPLICATION NO.9137 of 2002
And
CIVIL APPLICATION NO.539 OF 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NITINKUMAR SHANKERBHAI PARIKH
Versus
HIMMATBHAI V PATEL

Appearance:
1. First Appeal No. 2566 of 2002
MR YATIN SONI for appellant No. 1-2
Mr.H.P. Raval for
MR SAMIR B BUNDELA for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 18/02/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

1. Admit. Mr. Bundela, learned advocate, waives service of notice of admission on behalf of respondent plaintiff. By consent of the counsel appearing in the matter, Appeal is fixed forthwith. Considering the stand taken by the parties, filing of paper book is dispensed with. Considering the submission made before us, it is not necessary for us even to call for the record and proceedings from the trial court.

2. During hearing Mr.Soni has taken us through the judgment and decree under challenge passed by the learned Auxiliary Chamber Judge, City Civil Court, Ahmedabad dated 1.11.2002 below summons for judgment Exh.8 in Summary Civil Suit No.5108 of 2001 as well as the plaint of Summary Suit No.5108 of 2001 filed by the respondent plaintiff against the appellants defendants under Order 37 of the C.P.C. As found from the plaint, the respondent plaintiff has instituted a Suit against the appellants defendants for recovery of principal amount of Rs.2,25,000/-- with interest calculated at the rate of 12% per annum on the principal amount, quantified at Rs.46,000/--, and accordingly the plaintiff had prayed for a decree for a sum of Rs.2,71,000/--. Filing of the Suit was based on an Agreement arrived at between the appellant No.1 Nitinkumar S.Parikh with the respondent plaintiff Himmatbhai V. Patel. We have also gone through the said document. A summons for judgment was taken out by the respondent plaintiff supported with an affidavit of the plaintiff dated 21.3.2002 and the appellants - defendants have prayed for leave to defend the said Suit by filing written statement wherein the appellants - defendants had taken contention that the Suit filed by the plaintiff is not maintainable and the same is premature. The learned trial Judge has, while considering the summons for judgment taken out by the respondent - plaintiff and the reply filed by the appellants- defendants praying for leave to defend unconditionally, decreed the Suit in favour of the plaintiff for a sum of Rs.2,71,000/-- with interest at the rate of 12% per annum on principal amount of Rs.2,25,000/--. The learned trial Judge has in term given cogent reasoning in paragraph 3 of the order as according to the learned trial Judge there is no good defence on the merits of the case and further held that the defendants had in unequivocal term admitted the dues of the plaintiff and the defendants have no fair or

bonafide or reasonable defence and accordingly the trial court has decreed the Suit in favour of the plaintiff.

3. Mr.Soni, learned advocate, appearing on behalf of the appellants had filed Application for extension of time to deposit the amount and at that time, while considering the submission made before us, the counsel appearing in the matter had sought time to resolve the dispute and to put an end to their dispute finally and accordingly during hearing today, the parties with their advocates are present and a mention was made before us that they have agreed to settle the matter and the appellant No.1 Nitinkumar S.Parikh, who is present, is identified by Mr.Soni and the respondent plaintiff Himmatbhai V. Patel, who is also present, is identified by Mr.Bundela and all of them had requested us to dispose of this Appeal as per oral agreement arrived at between the parties today and requested that the Appeal be finally disposed of. It is brought to our notice that the appellants - original defendants had agreed to make initial payment of a sum of Rs.1 lac on or before 31.3.2003 to the plaintiff and further, in respect of the remaining amount, as agreed between the parties, the appellants will pay the said amount to the respondent plaintiff, namely, a sum of Rs.1,37,000/-- on or before 30.6.2003 and on such payment being made, the plaintiff had agreed that the decree passed by the trial court will stand satisfied and accordingly prayed for modification of the decree. We have also ascertained from the respondent plaintiff Himmatbhai V. Patel, who in term has also agreed for accepting the total amount of Rs.2,37,000/-- towards final settlement of the decree provided that the defendants make payment of Rs.1 lac to him on or before 31.3.2003 and if the original defendants fail to make payment of Rs.1 lac by 31.3.2003, it is also agreed between the parties that then the plaintiff is entitled to recover the entire amount as per the decree passed by the trial court. The plaintiff has also further agreed that if the appellants - original defendants pay as agreed i.e. a sum of Rs.2,37,000/-, the decree will stand satisfied.

4. In view of the oral arrangement made between the parties, the counsel appearing in the matter had requested us to dispose of the Appeal in the above terms. Accordingly the Appeal deserves to be allowed partly to the above extent and the appellants - original defendants are directed to pay a sum of Rs.1 lac to the respondent plaintiff on or before 31.3.2003, for which the plaintiff will issue receipt in respect of such payment to the defendants and the appellants defendants are further

directed that they shall pay a further sum of Rs.1,37,000/-- to the respondent - original plaintiff on or before 30.6.2003. Accordingly the appellants original defendants are liable to pay a sum of Rs.2,37,000/-towards the final settlement of the decree. However, if the appellants - original defendants fail to pay the initial amount of Rs.1 lac, as agreed by them, by 31.3.2003, it will be open for the respondent plaintiff to execute the decree of the trial court as it is. The appellants - original defendants are further directed to file undertaking before the trial court incorporating that the Flat in question, which is occupied by the appellants defendants, bearing No. D-2, L-2, Amikrupa Flats, Near Shreyas Crossing, Ambawadi, Ahmedabad 15, is without any attachment and the same is also not hypothecated to any Financial Institution or mortgaged to anyone and till the payment, as aforesaid, is made to the respondent plaintiff, the appellants original defendants will not dispose of the said Flat, without the permission of the trial court. Time to file undertaking is granted upto 28.2.2003. Copy of the undertaking to be furnished to the respondent plaintiff.

5. Appeal is accordingly partly allowed to the above extent. Decree is accordingly modified. However, there will be no order as to costs.

6. In view of the order passed in the main First Appeal, Civil Application No.9137 of 2002 filed by the original defendants for stay does not survive and the same stands disposed of accordingly. Rule is discharged. Interim relief stands vacated, with no order as to costs.

7. In view of the order passed in the main First Appeal, Civil Application No.539 of 2003 filed by the original defendants does not survive and the same stands disposed of accordingly.

(D.K.Trivedi,J)

(K.M.Mehta,J)

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